

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10400 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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MANGAJI SHAKARAJI THAKOR

Versus

COMMISSIONER OF POLICE AHMEDABAD.

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Appearance:

MR ANIL S DAVE for Petitioner

MR SS PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/08/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 20th November, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers

conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act').

The petitioner is alleged to be a 'bootlegger' within the meaning of section 2 (b) of the Act, and his activities are found to be prejudicial to the maintenance of public order within the meaning of section 3 (4) of the Act. Five offences punishable under the Bombay Prohibition Act are registered against the petitioner, four of them are pending trial. Besides, two witnesses on assurance of anonymity, have given statements in respect of the anti-social activities of the petitioner and its adverse effect on public tranquility and even tempo of life.

It is submitted that in respect of neither of the offences registered against the petitioner, the petitioner has been furnished with the reports of the chemical examination of the liquor allegedly recovered from the petitioner. It is contended that in four offences pending trial, though the chargesheet has been filed, said reports have not been furnished along with the respective chargesheet, and even in the case pending investigation, the said report has not been submitted. The averment is not controverted. It is a settled proposition of law that the reports of the chemical examination of the liquor alleged seized from the detenu are vital documents and ought to have been taken into consideration by the Detaining Authority while recording the subjective satisfaction. Such reports should also be furnished to the detenu to enable him to make an effective representation. This having not been done, the subjective satisfaction recorded by the Detaining Authority is vitiated and so also the order of detention.

Petition is, therefore, allowed. The order dated 20th November, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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